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MAILED

APR 25 2011

OFFICE OF PETITIONS

In-re Patent No. 7,887,788
Issued: February 15, 2011
Application No. 10/654,907
Filed: September 5, 2003
Attorney Docket No. **05725.1236-00**

: DECISION ON REQUEST FOR
: RECONSIDERATION OF
: PATENT TERM ADJUSTMENT
: and
: NOTICE OF INTENT TO ISSUE
: CERTIFICATE OF CORRECTION

This is a decision on the APPLICATION FOR PATENT TERM ADJUSTMENT-POST GRANT filed on April 12, 2011, requesting that the patent term adjustment determination under 35 U.S.C. § 154(b) be changed from 1378 days to 1420 days.

The application for patent term adjustment-post grant is **GRANTED**.

The patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of one thousand four hundred twenty (1420) days.

On February 15, 2011, the above-identified application matured into U.S. Patent No. 7,887,788 with a revised patent term adjustment of 1378 days. On April 12, 2011, patentees timely submitted this application for patent term adjustment (with required fee), asserting that the correct number of days of Patent Term Adjustment is 1420 days.

The Office initially determined a patent term adjustment of five hundred thirty nine (539) days which included three hundred eighteen (318) days of applicant delay. However, after the issuance of the patent, additional delays were recorded that revised the Patent Term Adjustment. Pursuant to 37 C.F.R. § 1.704(c)(10), a period of reduction totaling 42 days was entered for applicant filing papers after the mailing of the notice of allowance.

Patentee disputes the reduction of 42 days due to the submission on January 6, 2011 of a "COMMENTS ON STATEMENT OF REASONS FOR ALLOWANCE" after the mailing of the Notice of Allowance.

37 CFR § 1.704(c)(10) provides that:

Submission of an amendment under § 1.312 or other paper after a notice of allowance has been given or mailed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the lesser of:

(i) The number of days, if any, beginning on the date the amendment under § 1.312 or other paper was filed and ending on the mailing date of the Office action or notice in response to the amendment under § 1.312 or such other paper;

or

(ii) Four months;

As stated in MPEP 2732:

37 CFR 1.704(c)(10) establishes submission of an amendment under 37 CFR 1.312 or other paper after a notice of allowance has been given or mailed as a circumstance that constitutes a failure of an applicant to engage in reasonable efforts to conclude processing or examination of an application. The submission of amendments (or other papers) after an application is allowed may cause substantial interference with the patent issue process.

Certain papers filed after allowance are not considered to be a failure to engage in reasonable efforts to conclude processing or examination of an application. See *Clarification of 37 CFR 1.704(c)(10) – Reduction of Patent Term Adjustment for Certain Types of Papers Filed After a Notice of Allowance has been Mailed*, 1247 Off. Gaz. Pat. Office 111 (June 26, 2001). The submission of the following papers after a “Notice of Allowance” is not considered a failure to engage in reasonable efforts to conclude processing or examination of an application: (1) Fee(s) Transmittal (PTOL-85B); (2) Power of Attorney; (3) Power to Inspect; (4) Change of Address; (5) Change of Status (small/not small entity status); (6) a response to the examiner’s reasons for allowance or a request to correct an error or omission in the “Notice of Allowance” or “Notice of Allowability;” and (7) letters related to government interests (e.g., those between NASA and the Office). Papers that will be considered a failure to engage in reasonable efforts to conclude processing or examination of an application include: (1) a request for a refund; (2) a status letter; (3) amendments under 37 CFR 1.312; (4) late priority claims; (5) a certified copy of a priority document; (6) drawings; (7) letters related to biologic deposits; and (8) oaths or declarations.

A review of the application record reveals that the reduction was for an Amendment after Notice of Allowance (Rule 312) January 5, 2011, however the record supports a conclusion that no such amendment was filed on January 5, 2011 and therefore that the entry of 42 days for applicant delay is erroneous.

In view thereof, the patent term adjustment indicated in the patent should have been one thousand four hundred twenty (1420) days.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. See 35 U.S.C. § 254 and 37 CFR § 1.322. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by one thousand four hundred twenty (1420) days.

Telephone inquiries specific to this decision should be directed to the undersigned Petitions Attorney at (571) 272-3212.

A handwritten signature in black ink, reading "Patricia Faison-Ball". The signature is written in a cursive, flowing style.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

DRAFT
UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,887,788 B2

DATED : February 15, 2011

INVENTOR(S) : Valerie De La Poterie

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (1378) days

Delete the phrase "by 1378 days" and insert -- by 1420 days--